

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

ENCORE WIRE CORPORATION,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. _____
	§	
v.	§	
	§	
SOUTHWIRE COMPANY,	§	
	§	
Defendant.	§	

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, for its Complaint against Defendant would respectfully show as follows:

I. PARTIES

1. Encore Wire Corporation (“Encore”) is a Delaware corporation with its principal place of business at 1329 Millwood Rd., McKinney, Texas 75069.

2. Upon information and belief, Southwire Company (“Southwire”) is a Delaware corporation with its principal place of business at One Southwire Drive, Carrollton, Georgia 30119. Southwire is registered to do business in the state of Georgia, with its registered agent, Floyd W. Smith at One Southwire Drive, Carrollton, Georgia 30119.

II. JURISDICTION AND VENUE

3. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338.

4. Upon information and belief, Southwire is doing business in this judicial district and therefore is subject to personal jurisdiction in this judicial district.

5. Because Southwire is subject to personal jurisdiction in this judicial district, they are deemed to be residents of this district under 28 U.S.C. § 1391(b) and (c); therefore, venue is proper in this district under 28 U.S.C. § 1391(b) and (c).

III. FACTS

6. This Complaint arises from Southwire's false descriptions of Encore's goods and services and Southwire's use of a misdescriptive mark.

7. On information and belief, Southwire is a cable and wire manufacturer that sells cable and wire in interstate commerce.

8. Encore is a cable and wire manufacturer that sells cable and wire in

interstate commerce.

9. On information and belief, Southwire has made false and misleading statements to customers regarding the nature, character and quality of Encore's products in order to try to convince those customers to purchase goods from Southwire rather than Encore.

10. Southwire is the alleged owner of the "NO LUBE" trademark, U.S. Trademark Registration No. 3,293,485. A copy of the "NO LUBE" trademark is attached as Exhibit A.

11. On information and belief, Southwire uses the "NO LUBE" trademark on its SIMpull THHN product. Southwire's SIMpull THHN product contains a lubricant. A photograph of the Southwire's lubricated THHN product bearing the "NO LUBE" mark is attached as Exhibit B.

**IV. COUNT ONE: SOUTHWIRE'S FALSE DESCRIPTIONS UNDER 15
U.S.C. § 1125**

12. The allegations of Paragraphs 1 to 11 above are incorporated by reference.

13. On information and belief, Southwire has made false and misleading

statements to customers regarding the nature, character and quality of Encore's products in order to try to convince those customers to purchase goods from Southwire rather than Encore.

14. Southwire's acts have caused and will continue to cause great and irreparable damage to Encore's business.

15. As a result of Southwire's false descriptions of Encore's goods and services, Encore is entitled to appropriate relief as prayed for hereinafter.

V. COUNT TWO: CANCELLATION OF SOUTHWIRE'S MISDESCRIPTIVE MARK UNDER 15 U.S.C. § 1119

16. The allegations of Paragraphs 1 to 15 above are incorporated by reference.

17. This count is for the cancellation of Southwire's "NO LUBE" trademark.

18. On information and belief, Southwire has marked at least its SIMpull THHN product with a misdescriptive mark.

VI. JURY DEMAND

Encore hereby demands a jury trial.

VII. PRAYER

WHEREFORE, Encore respectfully requests that the Court enter a judgment that:

- (A) Southwire has violated 15 U.S.C. § 1125;
- (B) Encore be awarded its damages for Southwire's violation of 15 U.S.C. § 1125;
- (C) Southwire has violated 15 U.S.C. § 1119;
- (D) The registration of U.S. Trademark Registration No. 3,293,485 (the "NO LUBE" mark) is cancelled; and that,
- (E) Encore be awarded its costs and reasonable attorney fees incurred herein.

[SIGNATURE ON NEXT PAGE]

Date: July 1, 2010

By: /s/ Arthur D. Brannan

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